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Subject:— Opinions under the Bombay Primary Education Act, 1923.

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MRP.
20/7/56.

PLB 18/1 NLB 18/7

In his minutes at page 19 ante A(E) observes:

"With all respect to the R.L.A. I cannot agree that the A.O's order in this case (see R.L.A's opinion No.2369 dated 27-3-1945) was tantamount to dismissal. Rule 41-B says that dismissal may involve loss of pension whereas the proceedings in this case show that this result was specifically prevented. Thus the Order was one of removal"

The R.L.A. is requested to advise whether A(E)'s interpretation is correct.

2. It is a fundamental rule of construction that the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view (see Maxwell p.48). The proviso (a) to section 8(2) of the Bombay Primary Education Act, 1923, provides that a guaranteed teacher shall have the right of appeal to the Provincial Government against any order of dismissal. Rule 41-A of the Primary Education Rules, 1924, provides that an appeal shall lie to the local authority against the order of dismissal or removal of a teacher other than a guaranteed teacher. The expressi dismissal' has not been defined either in the Bombay Primary Education Act, or the rules thereunder. The ordinary meaning of 'dismiss' is 'to send away or remove from office, employment or position, to discharge, discard, expel(Murray's Dictionary Vol.III p.470). The distinction between 'removal' and 'dismissal' is sometimes made for special purposes such as suitability for reemployment of a discharged officer. But it is clear that every 'dismissal' is a removal from office and the distinction does not appear to have been made in any statutes or Acts. The words 'dismissal' as used in proviso (a) to sub-section (2) of section 8 of the Bombay Primary Education Act, 1923, and rule 41 (b) (iii) of the Bombay Primary Education Rules includes removal from office for any cause, and is not restricted to a removal from office which necessarily involves a slur or censure in addition to the termination of services (of.R.L.A.'s opinion No. O.Local Boards 30/29 dated 22-10-1929; See section 277(1) of the Government of India Act, 1935.)

3. To make any distinction between 'dismissal' and 'removal' or 'discharge' is likely to lead to an anomalous position, for under rule 41-A the non-guaranteed teachers will have the right of appeal against the order of removal or discharge whereas the guaranteed teacher will have no such right, which could not be the intention of the Legislature when by section 8 (1) of the Bombay Primary Education Act special precautions have been taken to safeguard their rights. It is true that udder rule 41-B dismissal may involve the loss of pension or Provident Fund; but the implication of this provision is that even a dismissed guaranteed teacher may be given pension. Rule 274 of the Bombay Civil Services Rules which applies to guaranteed teachers provides that when a Government servant is removed or requiring-or-super required to retire from Government service for misconduct or insolvency or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a retiring or super-annuation pension Government may, if the case is considered deserving of special treatment, sanction the grant to him of a compassionate pension. Consequently the distinction sought to be drawn by the Administrative Officer, Surat, between 'dismissal' and 'removal' does not appear to be quite valid. Regulation 9 of the Regulations made by the Surat Local Authority will have no application to guaranteed teachers, since otherwise it will be inconsistent with the proviso (a) to section 8(2) and rule 41-A of the Primary Education Rules. In the circumstances the R.L.A. is inclined to adhere to the view expressed in his opinion No. 2369 dated 27-3-1945.

4. The second question referred to the R.L.A. for consideration is whether the right delegated to the Surat Municipality to appoint the Administrative Officer can be withdrawn. Ordinarily there can be no legal objection to withdrawing the powers delegated to an authority. But in the present case in pursuance of the power delegated to the Surat Municipality under section 27-A of the Primary Education Act, the Administrative Officer

has been appointed. Consequently the question of withdrawing the delegated power will not arise until the appointment of a new Administrative Officer is mooted.

Sd/- R.T.K.
for Remembrancer of Legal Affairs

with items s. 73 (35)
and S. 49 (2) II slip A.

U.... to G.D. No. 483, dated the 19th January 1946.

SSD/-
6.7.1956.

Resubmitted.

This case which is exactly similar to Mr. ~~Pathan's~~ Pathan's case was held back pending the disposal of Mr. Pathan's case. In Mr. Pathan's case, R.L.A. had advised in his opinion No. 2369 dated 27-3-1945 (slip E in O. Prim.Edn./45 below) that A.O's order of removal wa nothing short of dismissal and that therefore it would be open to Govt. to set it aside and if necessary order a fresh inquiry by the A.O. Govt. issued necessary orders in the matter, but A.O. refused to carry them out and the matter was referred again to R.L.A who advised E.D. in his opinion No.6660 dated 12-91945 (slip O in O.Prim.Edn./45) to invite attention of the Surat Muny. to tne recalcitrant attitude of its A.O. A(E) however doubted R.L.A.'s view in opinion No. 2369 and the matter was referred again to R.L.A. who considered the question in his opinion No.483 dated 19-1-1946 and it was decided to adhere to the view expressed in opinion No.2369 dated 27-3-1945 (Papers put up below). This case is similar to Mr. Pathan's as has been stated above. ~~The xxxxxxisxxsimilarxtoxMrxPathan's~~ The case may, therefore, be returned to E.D. inviting the attention of that Department to R.L.A.'s opinion No.2369 dated 27-3-1945 given in Mr. Pathan's case

Attention of the E.D. is marked to R.L.S.'s opinion no 483 dated 19-3-1946.

Id/- ...
21/1

Id/- E.B.
21/1

Id/- R.T.K.
21/1

U.R. to E.D.; No 579, dated the 22-1-1946.

SSD/-
6.7.1956.

Office of the R.L.A.

As the Municipal School Board, Surat, was constituted under sub-section (4A) of section 3 of the Bombay Primary Education Act, 1923, with effect from 5th September 1944, sub-section (6) will have no application. Under sub-section (5) the term of office of the members appointed under sub-section (4A) shall cease on the expiry of the term of the local authority, namely, the Surat Municipal Borough. The view of the Deputy Secretary. General Deptt., is correct.

Id/- P.N.M.
23/3/46.

Remembrancer of Legal Affairs

U.R. to E.D., 2272, dated the 23rd March 1946.

SSD.
6.7.56. 4c.

Office of the R.L.A.

There is no legal objection to superseding the District School Board, Thana, Under sub-section (1) of section 26C of the Bombay Primary Education Act,1923, (cf. R.L.A's opinion No.274-Confl., dated 8th November 1940 and Advocate General's opinion No.16, dated the 13th July 1943, accompanying R.L.A's No.275-Confl., dated the 5th August 1943.)

Id/- P.N.M.
19/3/46.
Remembrancer of Legal Affairs.

U.R. to E.D. No. 2193, dated the 20th March 1946.

SSD.
6.7.56. 4c.

Office of the R.L.A.

The District School Board, Dharwar, created a post of Duputy Accountant in the Grade of Rs.95-5-125. The Administrative Officer wanted to appoint one Mr.Awari, a clerk serving in the School Board Office, to the newly a created post but the Chairman of the School Board, on his own initiative appointed Mr. Madenhalli, another clerk serving in the same office who was junior to Mr. Awari.

The power to make new appointments of clerks vests under rule 34(a) (i) of the Bombay Primary Education Rules in the District School Board, while the power to promote clerks vests under rule 41 (1) (c)(ii) solely in the Administrative Officer. Had the Chairman appointed to the new post some one, other than a clerk serving in the office of the School Board, his action would not have been open to challenge. But by appointing a serving clerk he has virtually promoted the clerk to a higher post and it can in the circumstances be held that by doing so he had encroached upon the powers of the Administrative Officer who alone was competent to promote clerks.

Id/- P.N.M.
2-5-46.

Remembrancer of Legal Affairs.

U.R. to E.D., No. 3261, dated the 2nd May 1946

SSD.
6.7.56. 4c.

Office of the R.L.A.

Sub.rule (1) of rule 25 of the Bombay Primary Education Rules, 1924 provides that any member of a School Board other than the Chairman and the Chairman may resign his office as a member of the board by giving notice in writing of his resignation as such member to the Chairman and the President of the Local Authority - respectively. Under sub-rule (2) in the event of any vacancy occurring on account of the death, resignation etc. previous to the expiry of his term of office, the vacancy shall be forthwith reported by the Chairman of the school board to the President of the Local Authority who shall take steps to fill it up as soon as conveniently may be, by the election of another representative of the class or body to which the original member belonged and the person so elected shall hold office so long only as the member in whose place he is elected would have held if the vacancy had not occurred. It is clear from these provisions that immediately a member resigns his office by giving notice in writing as prescribed by sub-rule (1), his resignation becomes effective and the casual vacancy is created for being filled up. All the members of the School Board, Thana, having resigned, the casual vacancies thus created must be filled up by election. The question of withdrawal of their resignations tendered under - sub-rule (1) of rule 25 does not therefore arise.

Id/- P.N.M.
7-5-46.

Remembrancer of Legal Affairs.

U.R. to E.D., No. 3393 dated the 7th May 1946.

SSD.
6.7.56. 4c.

Office of the R.L.A.

It appears that the District School Board, Nasik, was consxtituted by Government in April 1944 under section 3(6) of the Bombay Primary Education Act, 1923 for a period upto and inclusive of 15th August 1946. The Shhool Board to constituted elected in May 1944 Mr. P.S. Bhalerao as itx Chairman. On 31st August 1945, 8 members of the School Board sent a yadi to the Chairman, to convene a special meeting for the consideration of a nonconfidence motion against the Chairman. Rule 26 of theBombay Primary Education Rules, 1924, requires a special meeting to be convened within fifteen days of the receipt of the request. The Chairman, however, taking his stand on an incorrect rendering in Marathi of the relevant rule, in English called the meeting on 28th September 1945, i.e. after the expiry of the prescribed period. That meeting was postpond to 3rd October 1945 when the no-confidence motion was discussed and withdrawn on an expression of regret by the Chairman for some of his actions. The next meeting was held on 31st October 1945. At this meeting, after a heated discussion ~~and xwithdrawnxxxnxxanxxx

meeting held on 3rd October 1945 is settled. The dispute between the Chairman and the members has resulted in a deadlock. On 27th January 1946, some members of the School Board sent a representation to Government stating that the School Board had practivally ceased to function and requesting theremoval of the Chairman for failure to convene a special meeting for consideration of the no-confidence motion against him. It appears that the Chairman had also purchased certain books without the sanction of the School Board. On these facts, the following questions have been referred by E.D. to the R.L.A. for advice:-

(1) Whether the School Board can be dissolved and a new Board constituted under section 26-C of the Bombay Primary Education Act.

(2) Whether the Chairman can be removed under section 4-A(2).

(3) Whether the Chairman can be removed under section 3-E for his unauthorised action in purchasing books without the sanction of the School Board and his failure to refund theamount as directed by the Local Authority.

(4) Whether Government can direct the Chairman to convene a special meeting immediately.

Question No. (1).-The District School Board, Nasik, cannot be said to have failed in the proper performance of its duties merely because its Chairman had exceeded or abused his powers or acted contrary to the provisions of the Bombay Primary Education Act, 1923. It would not therefore be feasible to dissolve the present Board and constitute a fresh Board under section 26-C of the Bombay Primary Education Act,1923.

Question No.(2) :- Section 4-A(2) of the Bombay Primary Education Act, 1923, provides that the Chairman can be removed from his office

(1).....

(1) By the School Board by a resolution passed to that effect and supported by at least two-thirds of the total number of members of the School Board, or

(2) by the School Board with the sanction of the Provincial Government if the resolution is supported by less than two-thirds but more than one-half of the total number of members of the School Board.

It is as clear from this provision that the Chairman cannot be removed from office unless the necessary resolution is passed at a meeting of the School Board.

Question No. (3):- Section 3-E of the Bombay Primary Education Act, 1923, is a provision for the removal of members of the School Board for miscomduct and will it seems have no application to cases involving the removal of the Chairman of the School Board for which there is a special provision in section 4-A.

Question No. (4) :- There is no provision in the Bombay Primary Education Act enabling Government to direct the Chairman to convene a special general meeting immediately. It is however open to Government to impress upon the Chairman the advisability of calling a special general meeting at the earliest possible opportunity. If the Chairman fails to accept the advice, any member of the Board can force him by a mandamus from a competent Court to call such a meeting or cajole him into doing so.

Id/- P.M.M.
4-5-46.

Remembrancer of Legal Affairs.

U.R. to E.D., No. 3377-A, Dated 7th May 1946.

SSD.
6.7.56. 4c.

Office of the R.L.A

Dr. C. J. Ghia, the President of the Surat Borough Municipality contends that :-

(1) the order appointing members of the School Board is illegal as the Municipality was debarred from holding the elections as required by law on account of its illegal supersession;

(2) contingencies or contingency contemplated in sub-section (4-A) of section 3 of the Bombay Primary Education Act 1923 under which the Government had appointed members of the present School Board should have been mentioned in the order making that appointment.

The R.L.A., is requested to advise whether there is any force in the above contentions.

The new Surat Borough Municipality began to function from 5th April 1944. It did not, however, elect a new School Board before 3rd May 1944, the date on which it was superseded, inspite of the fact that the term of the old School Board had expired on 23rd March 1944. It was in these circumstances that the Government had to appoint members of the present School Board under sub-section (4-A) of section 3 of the Act. This was done not because the Surat Borough Municipality had been superseded but because it did not elect a new School Board before it was actually superseded. This being the position the first contention raised by the President of the Surat Borough Municipality is apparently not maintainable.

There is no doubt that the Provincial Government has to take action under sub-section (4-A) of section 3 of the Act if it is satisfied that any election for any reason cannot be held at all or cannot be completed within such period as it considers reasonable, or has not resulted in the return of the required number or qualified persons willing to take office. But it does not appear to be absolutely necessary for the Provincial Government to specify the contingency under which it has acted while passing such an

order of the appointment of the members of a School Board under sub-section (4-A) of section 3 of the Act, as has been questioned in this case. There-fore, the second contention raised by the President of the Surat Borough Municipality does not also appear to have eny force.

Id/- P.N.M.
18-5-46.

Remembrancer of Legal Affairs.

U.R. TO E.D.No. 3759, dated the 20th May 1946.

SSD.
7.7.56. 4c.

Office of the R.L.A.

Section 38 the Bombay Primary Education Act,1923 provides:-

> "The Provincial Government may on its own motion or on the recommendation of the school board or the local authority for which it has been constituted, supported by a resolution passed by at least two-thirds of the whole number of members of either body, remove any member elected to the school board, if such member has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct or has become incapable of performing his duties as a member by reason of any physical or mental infirmity"

The application of this section is limited to a member's misconduct in the discharge of his duties or disgraceful conduct or incapacity to perform his duties during the term in which the question of removal arises and not to misconduct, disgraceful conduct or incapacity during any previous term of office. The words "has been guilty of" in the section have not the effect of enlarging the scope of that section so as to include past misconduct, disgraceful conduct or incapacity. (Vide Advocate General's opinion No.21 dated 22-4-1929 given with refe-rence to section 23(7) of the Bombay District Municipal Act,1901). Consequently Mr.R.R.Naik, a member of the District School Board, Kolaba cannot be removed from office under sec.38 of the Bombay Primary Education Act, 1923 for his alleged disgraceful conduct during the life of the previous School Board.

Id/- R.N.M.
23-5-46.

Remembrancer of Legal Affairs.

U.R. to E., No. 3890, dated the 24th May 1946

SSD.
7.7.56. 4c.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether a fresh order under section 20(1) of the Bombay Primary Education Act, 1923 is necessary before a complaint is lodged after first conviction.

Section 18 of the Bombay Primary Education Act, 1923, provides that in every area of compulsion the parent of every child to whom a scheme applies shall in the absence of a reasonable excuse as hereinafter provided and if such parent and child ordinarily reside in such area cause such child to attend an approved school. The circumstances constituting reasonable excuse are set out in section 19. Section 20(1) lays down that where the school board is satisfied that the parent of any child who is bound under the provisions of section 18 to cause such child to attend an approved school, has failed to do so, the school board, after giving the parent an opportunity of being heard and after such inquiry as it considers necessary, may pass an order directing the parent to cause such child to attend an approved school on and from a date which shall be specified in the order. Under section 21(1) any parent against whom an order with reference to a child has been passed under section 20 and who fails to comply with the provisions of section 18 with respect to such child on or after the date specified in the order shall on conviction be liable to a fine not exceeding two rupees and, if such failure continues after such conviction he shall also on conviction be liable to a fine of eight annas for every day that the failure continues or is repeated. Reading these provisions together it appears that the object of section 20(1) is to give an opportunity to the parent to cause the child to attend an approved school from a date specified in the order of the School Board. The non-compliance of such order will render the

parent liable to prosecution and conviction. If, notwithstanding such conviction, the parent fails to cause the child to attend an approved school, he shall be liable on conviction, to a fine of eight annas for every day that the failure continues or is repeated. There is no warrant for the suggestion made by the Ahmednagar Courts that a fresh attendance order under section 20(1) would be necessary before a parent can be prosecuted, after his conviction, for his continued failure to cause the child to attend the school. Once an order under section 20(1) is passed calling upon the parent to cause his child to attend school from a specified date the first breach of the order is punishable with a fine of Rs. 2 and thereafter any subsequent or repeated breach renders the parent liable to a fine of 8 annas for every day the child fails to attend school unless the parent can satisfy the trying Magistrate or Patil that he had reasonable excuse for not sending the child to school.

Id/- R.N.M.
5-6-46.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 4198, dated the 7th June 1946.

SSD.
7.7.56. 4c.

Office of the R.L.A.

In Mayor, Aldermen, and Burgesses of Tenby vs. Mason (1908, 1 ch. 457) the defendant, a burgess and rate payer of a town, asserted his right to be present at meeting of the council of the borough (other than committee meetings) in his capacity of (1) ratepayer of the borough; (2) reporter of newspaper owned by him and published in that town and, in the alternative, as a member of the public. The corporation of the town claimed a declaration of the council's right to exclude persons not members of council (which the defendant was not) from their meetings; and for an injunction restraining the defendant from trespassing and being present at meetings of the council. It was held that a meeting of the council of a municipal corporation was not a public meeting in the sense that any member of the public had a right to attend. That there was no ground for implying against a municipal corporation a right which was not expressed in any statute nor is supported by any authority; and that the defendant had therefore no such right as was asserted by him either as a burgess or as a member of the public; nor had he the right to attend as a newspaper reporter without the express or implied permission the council. This decision has been greatly modified by the Local Authorities (Admission of the Press to Meetings) Act, 1908 which provides that the representatives of the press shall be admitted to the meetings of every local authority, but such representatives may be excluded by special circumstances when the majority of the members by express resolution consider such expulsion is advisable in the public interest (see Crew's Procedure at meetings ;:.81-82) There is no enactment in India providing for the admission of the representatives of the Press to the meetings of local authorities. The decision in Mayor, Aldermen, and Burgesses of Tenby vs. Mason therefore applies so far as it relates to the power of a local authority to exclude all or

of the representatives of the Press from its meeting and consequently it was competent for the District School Board, Ratnagiri to exclude by its resolution dated 22nd October 1944 the representative of "Balwant" - Mr. S.P. Desai - from its meetings unless he apologised to Mr.Patne for having incorrectly reported the proceedings and made defamatory statements about Mr.Patne; and rule 29 of the Bombay Primary Education Rules would in no way curtail the right of a local authority to control or regulate the admission of the Press representatives to its meetings.

2. Rule 29 of the Bombay Primary Education Rules provides that the meetings of the School Board shall be open to the public, unless the chairman of the meeting decides that the deliberation on any question shall be in private. This provision confers a statutory right on the public for admission to the meetings of the School Board but this is subject to the power of the chairman to remove or order the removal of disorderly persons and to regulate the meeting for preserving and maintaining order. "The Chairman collects as it were, his authority from the meeting" (per Jervis, C.J., Taylor vs. Nesfield; see Crew P.21) Mr. S.P. Desai would, as a member of the public be entitled to admission to the meetings at the School Board under rule 29 of the Bombay Primary Education Rules although in his capacity as representative of the "Balwant" he can be excluded.

Id/- P.N.K.
27-6-46.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 4688, dated the 29th June 1946.

SSD.
7.7.56. 4c.

Office of the R.L.A.

The quastion raised for the consideration of the R.L.A. is as to how the fines inflicted under sections 21 and 22 of the Bombay Primary Education Act, 1923 can be recovered.

2. Section 26 of the Bombay General Clauses Act, 1904 provides that sections 63 to 70 of the Indian Penal Code and the Provisions of the code of Criminal Procedure for the time being in force in relation to the issue and execution of warrants for the levy of fines shall apply to all fines imposed under any Bombay Act or any rule or by-law made under any Bombay Act unless the Act, rule or by-law contains an express provision to the contrary. The Bombay Primary Education Act, 1923 contains no express provision as to how the fines inflicted under sections 21 and 22 should be recovered. Consequently section 386(1) of the Criminal Procedure Code which prescribes the procedure for the recovery of the fine will apply to the fines inflicted under sections 21 and 22 of the Bombay Primary Education Act.

Id/- P.N.M.
22-8-46.

Remembrancer of Legal Affairs.

U.O.R. to E.D. No. 5894, dated the 26th August 1946.

SSD.
7.7.56. 4c.

Office of the R.L.A.

The question referred to the R.L.A. for consideration is whether the power to sanction the application of a teacher to retire from service before superannuation vests in the school board or the Administrative Officer.

2. Section 4(1) of the Bombay Primary Education Act,1923 enacts that from such date as the Provincial Government may direct in this behalf in respect of each school board, the school board shall exercise and perform such powers and duties as may be enacted in or prescribed under this Act. Rule 4(2) of the Bombay Primary Education Rules, 1924 provides that all officers, teachers, clerks and inferior servants employed by a local authority shall be under the control of and subject to, the orders of the school board except in so far as the powers of the school board have been limited by the Act or by these Rules. It is clear from these provisions that the residuary powers vest in the school board . The powers and duties of the administrative officer are specified in rules 41(1) and 43, but the power to sanction the applications of teachers for retirement from service before superannuation is not one of the powers expressly provided fro in those provisions. It is true that under clause (g) of rule 43 it is one of the duties of the administrative officer to prepare the pension papers of all teachers taken over by the local authority under sub-section (1) of section (8) of the Act; But that power cannot include power to sanction the applications of teachers for retirement from service before superannuation. Rule 34(f) provides for the power of the school board to sanction the pension in consultation with the Accountant General to teachers taken over by the local authority under section 8(1) of the Act. That power does

Not include power to sanction the applications for retirement from service before superannuation, since both are different powers. There being no provision either in the Act or the rules expressly vesting in any authority the power to sanction the applications of teachers for retirement from service before superannuation, such power would be deemed to be vested in the school board under rule 4(2). The view taken by the Director of Public Instruction in his letter at page 1 ante does not appear to be correct.

Id/- R.N.E.
13-8-46.

Remembrancer of Legal Affairs.

U.O.R. to E.D. No. 5682, dated the 15th August 1946.

SSD.
7.7.56. 4c.

Office of the R.L.A.

Under section 13 (1) of the Bombay Primary Education Act, 1923, the statutory liability of Government is limited to half or two-thirds of the additional recurring and non-recurring annual cost of the scheme according as it is the scheme of a Municipality or of a district local board as local authority; and the sums required to meet such liability would be a charge on the revenues of the Province (see section 78(3) of the Government of India Act, 1935). There is, however, nothing to prohibit Government from voluntarily making, with the sanction of the Legislative Assembly, any payment in excess of that liability and no amendment of the Bombay Primary Education Act, 1923, would be necessary for the purpose.

2. Section 9A(1) of the Bombay Primary Education Act, 1923 empowers Government to appoint officers to inspect approved schools. If Assistant Administrative officers, whom Government proposes to appoint, are to exercise some of the powers and duties of an Administrative officer prescribed by rule 41 of the Primary Education Rules, they would not be officers appointed to inspect approved schools within the meaning of section 9A(1). Consequently the Bombay Primary Education Act, 1923, will have to be amended to enable Government to appoint Assistant Administrative officers.

Id/- P.N.M.
27-9-46.

Remembrancer of Legal Affairs.

U.O.R. to E.D. No. 6024, dated the 27th Sept. 1946.

S.S.D.
9.7.56. 4c.

I agree.

On his appointment as a member of the District School Board, Panch Mahals, by Government under sub-section (4-A) of section 3 of the Bombay Primary Education Act, 1923, with effect from 4th May 1946, Mr. Surendrarey Bhaursi Desai was deemed to have been duly elected under sub-section(2)

Sub-rule (1) of rule 25 of the Bombay Primary Education Rules, 1924, provides that any member of a School Board other than the Chairman and the Chairman may resign his office as a member of the Board by giving notice in wirting of his resignation as such member to the Chairman and the President of the Local Authority, respectively. In his letter dated 18-7-46 addressed to the Secy. E.D. Mr. S.B. Desai stetes thus

"I may here mention that as soon as I had addressed by letter dated 11th May 1946 to you, I had also sent copies of the same to the Chairman, District School Board, Panch Mahals, the President, District Local Board, Panch Mahals and to the Collr. of Panch Mahals, and as such I was not served with any notice of meetings held since then etc."

It is thus evident that in fact the letter dated the 11th May 1946 is addressed to the Secretary, E.D. and mere copies of the same were sent to the Chairman D.S.B. and to the President, District Local Board, Panch Mahals. In this letter Mr. Desai shows his unwillingness to accept office as a member for a short duration. Even if Mr. Desai's letter dated 11-5-46 is deemed to be a notice of resignation in as much as it is addressed to the Secretary, E.D. and is not a notice "given to the Chairman and the President of the Local Authority", it does not comply with the requirements of sub-rule (1) of rule 25 of the Bombay Primary Education Rules, 1924, and consequently, it is invalid.

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Seen and returned.

The view expressed by the Deputy Secretary, Educational Department at page 67 ante is correct.

Id/- P.N.M.
24-9-46.

Remembrancer of Legal Affairs.

U.O.R. to E.D. NO. 6527, dated the 25th September 1946.

S.S.D.
9.7.56.. 4c.

Office of the R.L.A.

On the facts stated by the Director of Public Instruction in his letter No. S-99/6 (70)-D, dated 2nd August 1946 there appears no objection to his taking action under section 16-C of the Bombay Primary Education Act, 1923.

Id/- D.V.V.
Remembrancer of Legal Affairs.

U.R. to E.D. No. 9380, dated the 24th December 1946.

S.S.D.
9.7.56. 4c.

Office of the R.L.A.

In his opinion No.3261 dated the 2nd May 1946 the R.L.A. held that the Chairman District School Board, Dharwar by appointing Mr. Madenhalli, a clerk on the School Board establishment, to the newly created post of Deputy Accountant had encroached upon the powers of the Administrative Officer who alone was competent to promote clerks. The points now referred to the R.L.A. for further consideration are:-

(1) Whether the post of Deputy Accountant is a clerk's post;

(2) Whether the School Board's action in filling the post amounted to a new appointment or promotion; and

(3) Whether the Board took into consideration the recommendation of the Administrative Officer before filling the post.

Rule 53 (1) of the Bombay Primary Education Rules, 1924, provides that the conditions prescribed in clauses (a) to (e) shall be fulfilled before clerks are appointed, confirmed or promoted to higher grades. Clauses (c), (d), (e) contemplate that clerks in service may also be promoted to the higher post of Accountant. Under rule 53 (1) as it stands, the post of Accountant or Deputy Accountant can be held to be a clerk's post.

Applications for the post of the Deputy Accountant were invited, but of the six candidates, four did not possess the required qualifications with the result that there was no other alternative but to fill up the post by appointing one of the two clerks, already in service of the School Board, who were also applicants for the post and who possessed the required qualifications. In view of these circumstances, the only alternative left open to the School Board was to select one of the Clerks already in service, and to promote him as Deputy Accountant. Such an appointment cannot be regarded as a "new appointment

of clerks" within the meaning of rule 34 (a) (i) because no new clerk was recruited for the appointment.

As pointed out in the G.D. Officer note (see p.80 of file S [illegible]) "so far as the promotion of clerks is concerned the only higher posts in a School Board Office are those of Head Clerk and Accountant". "promotion" in many cases is merely an appointment to a higher post, and as in the present case clerk Madenhalli was appointed from the lower grade of clerk to the ghigher grade of Deputy Accountant with a ghigher scale of pay, it was virtually a promotion to a higher post. Consequently the question of promotion should have been decided by the Administrative Officer under rule 41 (c) (ii) read with rule 53 (1) (e).

The Administrative Officer of the School Board had recommended Mr. Awari for the post on account of seniority and efficiency but the Board did not approve of it. But a clerk who is not recommanded by the Administrative Officer cannot be appointed by the School Board (see R.L.R's No. 4293 dated 23-6-1943). moreover since it was purely a question of appointing a serving clerk to a higher post, it involved the question of "promotion" and not of "new appointment" and consequently, it was for the Administrative Officer under sub-clause (ii) of clause (c) of sub-rule (1) of rule 41 of the Bombay Primary Education rules to make such promotion.

Id/- P.N.M.
13-11-46.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 7955, dated the 13th November 1946.

SSD.
9.8.86 4c.